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10/743,246	12/22/2003	William J. Garrison	BCS03192	6962
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EXAMINER				
TEKLE, DANIEL T				
ART UNIT		PAPER NUMBER		
2481				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DOCKETING.MOBILITY@MOTOROLA.COM

Office Action Summary

Application No.

10/743,246

Applicant(s)

GARRISON ET AL.

Examiner

DANIEL TEKLE

Art Unit

2481

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06/03/11.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 3, 2011 has been entered.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claim 10-13** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
3. The claim recites, *inter alia*, "A tangible computer readable storage medium including program instructions....." After close inspection (***see applicant specification "page 4 paragraph 0015 a storage medium means". while paragraph 15 clearly discloses a storage medium can carry "....signal-bearing media means...." a signal and also the listed of storage medium means is not close-ended since the specification discloses "....including one or more...and the like....."; further an amendment to specification filed June 24, 2008 paragraph 0029 a replacement of page 9 paragraph 0027 also the listed of storage medium means is not close-ended since the specification discloses "....storage media,***

which include, but are not limited.....”), the Examiner respectfully notes that the disclosure, as a whole, does not specifically identify what may be included as a computer readable storage medium and what is not to be included as a computer readable storage medium.

4. An Examiner is obliged to give claims their broadest reasonable interpretation consistent with the specification during examination. The broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent. See MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal, *per se*, the claim must be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter.

5. Therefore, given the silence of the disclosure and the broadest reasonable interpretation, the computer readable storage medium of the claim may include transitory propagating signals. As a result, the claim pertains to non-statutory subject matter.

6. However, the Examiner respectfully submits a claim drawn to such a computer readable medium that covers both transitory and non-transitory embodiments may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 U.S.C. § 101 by adding the limitation “non-transitory” to the claim. Such an amendment would typically not raise the issue of new matter, even when the

specification is silent because the broadest reasonable interpretation relies on the ordinary and customary meaning that includes signals *per se*. For additional information, please see the Patents' Official Gazette notice published February 23, 2010 (1351 OG 212).

35 U.S.C. 112, sixth paragraph

a claim limitation will be presumed to invoke 35 U.S.C. 112, sixth paragraph if it meets the following 3-prong analysis: (A) it uses a non-structural term (B) The term is modified by functional language (C) The limitation does not include the structure necessary to perform the claimed function.

Regarding Claim 14-15 and 17-20: The means plus function language used in claim 14-15 and 17-20 indicates that applicant intends to invoke 35 U.S.C. 112 paragraph six. Where means plus function language is used, claim limitations are interpreted to read on only the corresponding structure disclosed in the specification and equivalents thereof. The disclosed structure used for the "means for identifying a quantity of AV program data " consider to read on (processor 200 of Figure 2 of Applicant's Application Publication as indicated in [paragraph 0020]); "means for obtaining a storage schedule" consider to read on (processor 200 of Figure 2 of Applicant's Application Publication as indicated in [paragraph 0020]); "means for obtaining a deletion schedule" consider to read on (processor 200 of Figure 2 of Applicant's Application Publication as indicated in [paragraph 0020]); "means for producing temporally dynamic indicia" consider to read on (I/O interface 105 Figure 1 of Applicant's Application Publication as indicated in [paragraph 0019]); "means for displaying a pictorial representation" consider to read on (display of Figure 1 of Applicant's Application Publication as indicated in [paragraph 0023]); "means for modifying a recording configuration" consider to read on (processor

400 of Figure 5 of Applicant's Application Publication as indicated in [paragraph 0026]); "means for re-producing temporally dynamic indicia" consider to read on (Applicant's Application Publication as indicated in [paragraph 0022]); "means for increasing compression ration of an AV program stored" consider to read on (processor 400 Figure 5 of Applicant's Application Publication as indicated in [paragraph 0026]); "means for increasing compression ration of an AV program scheduled" consider to read on (processor 400 Figure 5 of Applicant's Application Publication as indicated in [paragraph 0026]); "means for deleting an AV program" consider to read on (processor 400 Figure 5 of Applicant's Application Publication as indicated in [paragraph 0026]); "means for archiving an AV program" consider to read on (processor 400 Figure 5 of Applicant's Application Publication as indicated in [paragraph 0026]).

The prior art element is a structural equivalent of the corresponding element disclosed in the specification. That is, the prior art element performs the function specified in the claim in substantially the same manner as the function is performed by the corresponding element described in the specification. Therefore, the prior art element is an equivalent.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1, 10 and 14 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. Calms 1, 10 and 14, line 12 of the claims limitation discloses "...a future time period which is an elapsed length of time from the current time...." means is not clear. Applicant appropriate correction required. For purpose of prosecution the examiner reads as "elapsed time is as after a certain amount of time has passed".

Response to Argument

Applicant's arguments filed March 24, 2010 have been fully considered but they are not persuasive.

Applicant argument page 8 of the remark, "Ficco clearly does not produce dynamic indicia representing the future time period".

In response the examiner respectfully disagrees. Ficco teaches recording attributes as outlined on fig. 21b, as well as archiving attributes fig. 21c.

Applicant argument page 8 second and third paragraph, "Ficco does not consider material which is to be deleted in relation to available disk capacity in a period of time, nor consider a storage schedule comprised of a first and second program".

However the examiner disagrees. Ficco teaches fig. 21a-c setting recording attributes as well as setting archiving time. Ficco clear defined on fig. 21b and 21 c, a recording and deletion schedule.

Further applicant argue page 9 first paragraph "Ficco does not disclose any attempt to determine an allocation of capacity over a period of time based on the chosen storage time for a program".

The examiner respectfully disagrees. Ficco clearly shows an "allocation of capacity over a period of time" means as disclosed on Fig. 15 file attributes means, fig. 21a-c recording and deletion attributes for a predetermined time. Therefore as a whole of the reference Ficco discloses all the claim limitation as outlined.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 8-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ficco et al. (US 2002/0054750).

Regarding claim 1: Ficco et al discloses a method of representing allocation of storage unit capacity within an audio/video (AV) recording device, comprising the steps of: identifying a quantity of AV program data stored on said storage unit (**paragraph 0106 and fig. 12: Disk Gas Gauge status parameter generally indicates the percent of the HDD 320 that has been consumed by recorded material**); obtaining a storage schedule for new AV program data to be stored on said storage unit in a predetermined period of time (**paragraph 0102, 0123 and fig. 21a-b:setting a recording attributes....**), comprising of the first AV program data and the second different AV

program data defined over a predetermined time period (**paragraph 0116 and Fig. 21b**); obtaining a deletion schedule for a plurality of old AV program data stored in the storage unit defined over predetermined time period (**paragraph 0123-0124 and Fig. 21b:how long of a time a program is to be stored before being erased....**); and producing temporally dynamic indicia representative of allocation of capacity of storage unit over predetermined time period in response to said quantity of AV program data, storage schedule, and deletion schedule (**paragraph 0106, 0116 and 0123-0124: ...file attributes as showing in fig. 15.....**), wherein predetermined time period is a future of time period which is an elapsed length of time from a current time of the step of identifying a quantity of AV program data stored on storage unit (**paragraph 0123-0124 and fig. 21a-c:....when data recorded and set for predetermined deleting scheduled, which is a time passed from the current time considers to read on elapse time between current time and future time....**).

Regarding claim 2: Ficco et al discloses a method of claim 1, further comprising: displaying a pictorial representation of said temporally dynamic indicia on a display device in communication with said AV recording device (**figure 12a-c**).

Regarding claim 3: Ficco et al discloses a method of claim 1, wherein step of producing comprises: (a) selecting a time (**paragraph 0123**); (b) determining a storage configuration of storage unit in response to quantity of AV program data, storage schedule, and deletion schedule at selected time (**paragraph 0123-0124**); (c) repeating steps (a) and (b) to determine a plurality of storage configurations for a respective plurality of times (**paragraph 0123-0124**); and (d) combining plurality of storage

configurations to form said temporally dynamic indicia (**paragraph 0116 and figure 12a-c**).

Regarding claim 4: Ficco et al discloses a method of claim 3, further comprising: successively displaying pictorial representations of plurality of storage configurations on a display device in communication with said AV recording device to define a graphical animation (**figure 12**).

Regarding claim 5: Ficco et al discloses a method of claim 4, wherein graphical animation comprises a pie chart (**paragraph 0107 and figure 12**).

Regarding claim 6: Ficco et al discloses a method of claim 1, further comprising: modifying a recording configuration of AV recording device in response to temporally dynamic indicia (**paragraph 0123-0124 and figure 12**); and re-producing temporally dynamic indicia in response to modified recording configuration (**figure 12**).

Regarding claim 8: Ficco et al discloses a method of claim 6, wherein step of modifying comprises: deleting an AV program stored on storage device (**paragraph 0116**).

Regarding claim 9: Ficco et al discloses a method of claim 6, wherein step of modifying comprises: archiving an AV program stored on storage device (**paragraph 0124**).

Regarding claim 10: Claim 10 reject for the same reason to claim 1 as discussed above; further Ficco teaches a recording medium means (**Fig. 1: HDD 320**).

Regarding claims 11-13: Claims 11-13 are reject for the same reason to claim 4-6 respectively as discussed above.

Regarding claims 14-20: Claims 14-20 are reject for the same reason to claim 1-2 and 5-9 respectively as discussed above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Ficco et al. as applied to claim 1-6 above, and further in view of Kaneko et al. (US 6,671,454).

Regarding claim 7: Ficco et al discloses all a method claim 6 limitation, further Kaneko et al. discloses the step of modifying comprises at least of: increasing compression ratio of an AV program stored on storage unit (**Fig. 14**); and increasing compression ratio of an AV program scheduled for storage on storage unit (**Fig. 14**).

It would have been obvious to one ordinary skill in the art at the time of the invention was made to combine the teaching of Kaneko et al. into Ficco et al. in order to increase the compression ration for recorded and schedule data; thus it is suitable to a user to free storage space for further AV data recording.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL TEKLE whose telephone number is (571)270-1117. The examiner can normally be reached on 8:00am to 4:30pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Daniel Tekle/
Examiner, Art Unit 2481
/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2481